



**HOME BUILDERS & REMODELERS ASSOCIATION
OF CONNECTICUT, INC.**

3 Regency Drive, Suite 204, Bloomfield, CT 06002
Tel: 860-216-5858 Fax: 860-206-8954 Web: www.hbact.org

*Your Home
Is Our
Business*

March 10, 2017

To: Senators Logan and Cassano, and Representative Lamar, Co-Chairs
Representative Zawistowski, Ranking Member
Members of the Planning & Development Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **Support SB 944, AAC Clarifying the Continuation of Nonconforming
Uses, Buildings and Structures**

The HBRA of Connecticut is a professional trade association with about eight hundred (800) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. We build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

We Support SB 944 and thank you for raising and hearing this bill. The bill simply clarifies the law that nonconforming uses, buildings and structures shall not be deemed abandoned when such nonconformity needs to be repaired by first conducting demolition or deconstruction. For example, a porch or deck that was made nonconforming by the adoption of a new zoning regulation may be in such a state of disrepair that in order to repair it you need to first demolish or deconstruct it. The problem is when the demolition or deconstruction occurs, some towns deem this to be abandonment of the nonconformity and do not allow you to proceed with reconstruction. Hiring an attorney and pursuing relief in court is not a realistic option for most homeowners. **So, property owners are left with a Hobson's choice – either live with a structure in disrepair, potentially even a dangerous situation, or abandon it altogether. This violates the principle that a nonconformity is a vested property right that cannot be discontinued by government action.**

As we did with prior legislation this session on nonconforming uses and buildings, a brief explanation of nonconforming uses, buildings or structures in CT follows.

The CT zoning enabling act, CGS sec. 8-2, states that zoning "regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations." A nonconformity is a former legal use of property or a legal building or structure that is made illegal by the adoption of a zoning regulation. Examples are many throughout CT, such as a commercial use that finds itself in a newly adopted residential zone, or a house that is 20' from the side property line that finds itself in a zone with a newly adopted 25' sideline setback.

Connecticut law has long stated that these nonconforming uses, buildings or structures are vested property rights entitled to Constitutional protection. These rights run with the land.

Vision: "Building CT's Economy, Communities and Better Lives One Home at a Time"
Mission: "Using Effective Advocacy and New Knowledge to Solve Our Member's Problems"

That is, a purchaser of a property does not forfeit the property right in the nonconforming use or building when the purchase is made with knowledge of the nonconformity.

However, while protected, nonconforming uses, buildings and structures are not favored in land use planning because they may detract from a municipality's overall comprehensive land use plan. Thus, generally, a nonconforming use cannot be extended or increased, although in some cases it can be intensified. A nonconforming building or structure cannot be enlarged, at least as it relates to further intrusion on the regulation that caused the nonconformity or violates other parts of the zoning regulations. There are many cases from the courts that are highly fact specific that attempt to explain these principles (not always with success).

Some states, but not CT, allow nonconformities to amortize, i.e., be extinguished after a period of years. We believe this is an affront to the vested rights of property owners and we would oppose any attempt to so extinguish such rights. CT's approach avoids litigation and possible inverse condemnation (Takings) claims. Also, CT allows zoning regulations to provide more protection, but not less, to nonconformities.

Finally, and importantly for SB 944, if a property owner abandons or discontinues a nonconformity, the right is extinguished. Abandonment and discontinuance mean the same thing. **The courts have stated to establish abandonment, it must be proven that the owner voluntarily discontinued the nonconforming use and such voluntary discontinuance was accompanied by an intent to not reestablish that use. Therefore, SB 944 simply clarifies this already accepted principle in our law.** And, property owners faced with this situation will no longer have to go to court to protect their rights – they can just point to this new statute.

While we support the bill, we urge you delete the new language at lines 118-119, “, except if such nonconforming use, building or structure is expanded” because it implies if the repair or reconstruction does expand the nonconformity the entire nonconformity would be abandoned or terminated. This is not the normal recourse when a nonconformity is expanded. Generally, the property owner is required to remove the expansion, not discontinue or abandon the existing nonconformity. Also, given the current caselaw that prevents the expansion of a nonconformity, the clause at 118-119 is unnecessary.

Please support SB 944 with the suggested language change.

Thank you for the opportunity to comment on this legislation.